

EXHIBIT 85

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Mark Nunez, et al.,
Plaintiffs,

-against-

The City of New York, et al.,
Defendants.

Case No. 11-cv-5845 (LTS)(JCF)

DECLARATION OF JOSHUA GONZALEZ

JOSHUA GONZALEZ, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I make this declaration in support of Plaintiffs’ Motion for Contempt and Receivership filed in this case, *Nunez, et al. v. City of New York, et al.*, 11-cv-5845.
2. I was arrested on October 28, 2022, and have been in custody of the New York City Department of Correction (“DOC”) ever since.
3. On April 16, 2023, I was in Enhanced Supervision Housing (“ESH”) at the George R. Vierno Center. My housing area in ESH was 11A.
4. People in ESH were entitled to have a shower every day after 4 p.m. When it was time for showers, correction officers typically would go in order, from cell to cell, offering each person a shower, but sometimes officers picked and chose who could get access to the showers. My routine was to wait until it was my turn, and when an officer offered me a shower, I accepted. I was locked in my cell most of the day in ESH, and a shower offered a chance to come out. It was the best thing ever.
5. On April 16, 2023, our showers were delayed. One officer was in charge of escorting people in 11A that day. When I became concerned that I was not going to get a shower,

I asked the officer about it. He said something like, “You’re on the line.” When more time passed and I still had not taken a shower, I asked the officer again. Around 6:30 p.m., I became more persistent. I believe other people who wanted to take showers were also not being allowed to because I heard people banging on their cell doors asking for showers.

6. Around 7:00 or 8:00 p.m., the officer placed handcuffs on me and removed me from my cell to escort me to the medical clinic to get my medication.

7. When the officer was escorting me to the clinic, I told him that I wanted to take a shower. He said something like, “It’s too late. That’s not going to happen.”

8. When I arrived at the clinic, the officer removed my handcuffs and stood behind me while I talked to the nurse. I told her that I had not gotten a shower and that I was going to inquire about a shower when I went back into 11A.”

9. After I received my medication, the officer handcuffed me behind my back. He then began to escort me back into ESH. He had me in a hold, with his right hand intertwined with my left arm. As he began to escort me back, I said to him something like, “I’m going to ask the A bubble officer why my door was never opened so that I could take a shower.” The A bubble officer is the person in the A station who can open or close a cell door.

10. The officer escorting me did not respond, and I moved toward the A bubble. Without saying anything, the officer escorting me picked my body up and slammed me to the ground. My legs went in the air. It all happened so fast. It was unexpected. All I remember is hitting the floor. My face hit the floor hard. I was not able to brace myself at all because I was rear cuffed.

11. When I hit the floor, the officer pinned me to the ground. I couldn’t see what he was holding me down with, but it felt like his knee was on my back. The officer kept saying,

“Stop resisting, stop resisting,” and I responded, “I’m not resisting.” Around that time, another officer came by and grabbed my legs, which were not shackled, and shackled them. That officer then stayed near us.

12. When I was on the ground, I used my tongue to touch my teeth, and they felt shattered. I said something like, “You just shattered my teeth.” I could feel the cracks with my tongue. When I spit on the floor, I also realized my mouth was bleeding. The officer then said something like, “I overheard you mention something to that nurse about taking a shower. I was hoping you were going to do something stupid.”

13. The officer was putting so much pressure on my back with his body that I felt like I could not really breathe. I felt like I was suffocating. I tried to turn my body and my face to the side so that I could get some air and catch my breath. I felt awkward, in pain, and confused. Nothing made sense to me.

14. The next day, I requested medication for the pain in my mouth from the assault.

15. Over the next few weeks, I sought dental treatment for my broken tooth. While I already had missing teeth, being slammed into the ground caused new injuries to my teeth—one tooth was shattered and another was chipped.

16. The left side of my mouth was in a lot of pain. I tried to chew on my right side, but food kept getting caught in my shattered tooth, causing pain. A doctor prescribed me Lidocaine viscous, a liquid medication, to numb my mouth so that I could eat. I had to use it, wait two hours, and then eat. This process messed with my eating because my food would get cold before I was ready to eat it. If the officer assigned to the unit was a regular, the officer usually would put the food back in the warmers for me, but if the officer was not a regular, the

officer usually would not. I often would not eat because I was in pain or because my food was cold.

17. On May 23, 2023, the tooth that was shattered was extracted after it was deemed fractured and nonrestorable.

18. There is no way to be safe in DOC custody. I have seen many individuals get hurt. I do not feel protected by the officers. I am dealing with nothing but stress.

Dated: November 9, 2023
New York, New York



JOSHUA GONZALEZ